

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 02 ANKARA 004047

SIPDIS

STATE FOR EB/IFD/OIA FOR ALEXANDER BRYAN  
TREASURY FOR OASIA  
DEPT PLEASE PASS USTR  
FAS FOR ITP/THORBURN  
USDOC FOR ITA/MAC/DDEFALCO

E.O. 12958: N/A

TAGS: [EINV](#) [KTDB](#) [EFIN](#) [TU](#)

SUBJECT: JULY 2004 APPENDIX TO THE 2003 INVESTMENT  
CLIMATE STATEMENT FOR TURKEY

Ref: STATE 141379

This appendix serves as an update to the 2003 Investment Climate Statement for Turkey. It has been provided to assist investors in the interim period resulting from the U.S. Government's decision to begin publishing the Country Commercial Guide (of which the Investment Climate Statement is a chapter) on a calendar year basis, in January instead of August.

The U.S. Government has reviewed the 2003 Investment Climate Statement for Turkey (ICS), and has noted the following changes that have occurred since its publication. In most circumstances, if a portion of the ICS has not been modified in this appendix, it is because the U.S. Government is satisfied that it continues to accurately reflect the state of affairs in Turkey as of July 2004.

**Openness to Foreign Investment:** There have been several changes in investment-related legislation and regulation since mid-2003, though not all have been fully implemented. Implementing regulations for Law 4875 on Direct Foreign Investment have been issued. Law 5189, published in the State Gazette in July 2004, lifts the limit on foreign ownership of telecommunications firms Turk Telecom and Telsim. Inflation accounting was introduced at the end of 2003. Law 5177, published in June 2004, amended existing legislation on mining with a view toward making this sector more accessible to foreign investment by streamlining permit requirements and procedures and removing limits on mining on certain types of land. An additional source of information on investment-related legislation is the Turkish Treasury Undersecretariat website [www.hazine.gov.tr](http://www.hazine.gov.tr).

**Conversion and Transfer Policies:** As the result of a 1997 court decision, the Turkish Government has blocked full repatriation of investments by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. For more than 40 years, the law had been interpreted and implemented to allow exploration investments to be recovered from current revenues at the exchange rate prevailing when the registered investment was actually made. Two companies have challenged the 1997 decision and the case is currently in the Turkish court system. Parliament is considering amendments to the petroleum law.

**Expropriation and Compensation:** No significant changes since 2003.

**Dispute Settlement:** No significant changes since 2003.

**Performance Requirements/Incentives:** Law 5084, which went into effect in early 2004, encourages investment in provinces with per capita income below USD 1,500 annually as well as to high priority development regions. For low income provinces and under certain conditions, the law provides: withholding tax incentives on income tax; social security premium incentives; free land; and electricity price support. These incentives will remain in effect until the end of 2008, except for allocation of free public land, which has no expiration date. The same law also limits certain tax preferences enjoyed by Turkey's free zones (see below).

**Right to Private Ownership and Establishment:** See the Openness to Foreign Investment section on new telecommunications-related legislation.

**Protection of Property Rights:** Turkey was elevated from the Special 301 Watch List to the Priority Watch List in 2004, due to concerns about lack of pharmaceuticals data exclusivity protection and continued high piracy and counterfeiting of copyright and trademark materials. Legislation enacted in March 2004 contains several

strong anti-piracy provisions, including a ban on street sales of all copyright products and authorization for law enforcement authorities to take action without a complaint by the rightholder. However, the law also reduces potential prison sentences in piracy convictions. Parliament amended the Patent Law in June 2004. The new law provides for penalties for infringement of up to 3 years or 47 billion TL (approximately USD 32,000) in fines, or both, and closure of the business of up to one year. However, some companies in the pharmaceuticals sector have criticized provisions which give judges wider discretion over penalties in infringement cases, delay the initiation of infringement suits until after the patent is approved and published, and permit use of a patented invention to generate data needed for the marketing approval of generic pharmaceutical products (Bolar use).

**Transparency of the Regulatory System:** Amendments to the public procurement law in 2003 enlarged the definition of domestic bidder (enjoying bidding preference) to include corporate entities established under Turkish law, including those established by foreign companies. See below on changes in tax incentives for Turkey's free zones.

**Efficient Capital Markets and Portfolio Investment:** No significant changes since 2003.

**Political Violence:** Turkey experienced several major acts of terrorism in the last year. Please check the current Consular Information Sheet for Turkey (<http://travel.state.gov>) for further information on security conditions.

**Corruption:** No significant changes since 2003.

**Bilateral Investment Agreements:** No significant changes since 2003.

**OPIC and Other Investment Insurance Programs:** No significant changes since 2003.

**Labor:** No significant changes since 2003.

**FOREIGN TRADE ZONES/FREE PORTS:** LAW 5084 REVISES THE FREE ZONES LAW AND EFFECTIVELY ELIMINATES CERTAIN INCOME AND CORPORATE TAX IMMUNITIES FOR THE FREE ZONES. UNDER THE NEW RULES, TAXPAYERS WHO POSSESSED AN OPERATING LICENSE AS OF FEBRUARY 6, 2004 WILL NOT HAVE TO PAY INCOME OR CORPORATE TAX ON THEIR EARNINGS IN THE ZONE FOR THE DURATION OF THEIR LICENSE. THE EARNINGS THAT TAXPAYERS ENGAGED IN MANUFACTURING ACTIVITIES IN THE ZONE SECURE FROM THE SALE OF THE PRODUCTS WILL BE EXEMPT FROM INCOME TAX AND CORPORATE TAX UNTIL THE END OF THE YEAR IN WHICH TURKEY BECOMES A FULL MEMBER OF THE EUROPEAN UNION. IF EARNINGS THAT ARE SECURED IN A FREE ZONE UNDER CORPORATE TAX IMMUNITY ARE PAID AS A DIVIDEND TO REAL PERSON SHAREHOLDERS IN TURKEY OR TO REAL PERSON OR LEGAL-ENTITY SHAREHOLDERS ABROAD, THEY WILL BE LIABLE FOR WITHHOLDING AT THE RATE OF 10 PERCENT. THE INCOME TAX IMMUNITY APPLICABLE TO THE WAGE AND SALARY INCOME EARNED BY PERSONS EMPLOYED IN THE ZONE BY TAXPAYERS POSSESSING AN OPERATING LICENSE AS OF FEBRUARY 6, 2004 WILL REMAIN IN EFFECT UNTIL DECEMBER 31, 2008, EXCEPT THAT THIS IMMUNITY WILL CEASE IF THE OPERATING LICENSE EXPIRES BEFORE THAT DATE.

**Foreign Direct Investment Statistics:** Statistics will be updated in the next full revision of the Investment Climate Statement, which will be published in January 2005. Deutsch